

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

IN RE: TOPP, PAUL D., DEBTOR
CHAPTER 12 BANKRUPTCY CASE NO. 23-30163

MOTION FOR USE OF CASH COLLATERAL

Paul D. Topp, Debtor-in-Possession, by undersigned counsel, moves the Court for an order authorizing the use of cash collateral.

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and is a core proceeding.
2. This Chapter 12 case was filed on May 22, 2023 and is pending in this Court.
3. This motion arises under 11 U.S.C. § 363(c)(2) and is filed under Bankruptcy Rule 4001(b). The Debtor seeks relief to use proceeds checks to fund ongoing and necessary expenses for the farming operation.
4. Bank Forward and Debtor have executed various loan agreements, security agreements, mortgages, etc., See Bank Forward's Motion to Lift Stay & Exhibits, [Docket #12]. On August 12, 2010, Debtor granted Bank Forward various security interests, including accounts receivables and proceeds from sale of livestock.
5. According to Bank Forward's proof of claim (POC #7), Bank Forward is owed \$3,024,282.96. Using the Debtor's valuations provided in his schedules and liquidation analysis, there is an equity cushion of over \$3,000,000.00 after deduction for the second priority lien to SBA and other crop input lien providers.
6. Central Plains Ag Services, "Central Plains", (POC #18), provided various inputs to the Debtor's operation and is secured by a UCC-1 Financing statement filed on March 25, 2022. This financing statement secures various crops and livestock.

7. Agronomy Services, POC #, has a UCC-1 Financing statement, but it was filed in July 11, 2023. The cash collateral at issue is related to 2022 and 2023 sales prior to the filing date and is not secured by this financing statement.
8. Bank Forward, through its counsel, consents to the use of the following checks made payable to Paul Topp, for payment of ongoing expenses for the farming operation:
 - a. Lake Region Livestock, Inc. Check #015359 - \$5,148.36
 - b. Lake Region Livestock, Inc. Check #015313 - \$28,713.39
 - c. Brandon Schafbuch Check #2533 - \$8,500.00
 - d. Darwyn J. Myers Check #10655 - \$7,000.00
 - e. Schlichting Farm & Ranch Check #5180 - \$650.00
 - f. Darin Rodin Check #6248 - \$4,000.00
 - g. Embryo Genetics, LTD Check #9 - \$4,000.00
 - h. Sabinash & Sons Check #14800 - \$4,000.00
 - i. Lake Region Livestock, Inc. #015606 - \$6,281.74

The sum of these checks total: \$68,293.49

9. The Debtor will use these checks for the following expenses:
 - a. Payroll: \$6,500.00
 - b. Corn Chopping: \$20,000.00
 - c. Fuel: \$11,000.00
 - d. Feed Purchases: \$22,000.00
 - e. Family Living Expenses: \$8,793.49
10. Debtor Paul D. Topp will provide an affidavit in support of this motion showing the immediate need of these funds for the operation and his household. This affidavit will be filed as soon as possible, but no later than end of business Monday, September 18, 2023.
11. Debtor's Chapter 12 Plan of Reorganization is due September 20, 2023, which will provide ongoing cash flow information. It is anticipated these funds should help maintain the operation through at least mid-October. Debtor is also working diligently to secure other financing to support plan confirmation.
12. Expedited relief for an interim order is requested solely as the ongoing expenses to care

for the cattle continue to be needed. Corn Chopping, feed purchases and other harvest season expenses are necessary for the ongoing operation and the funds are needed as soon as possible. In addition, the household is in dire need of ongoing food, transportation, and other typical necessary expenses.

13. Due to the substantial equity cushion, sufficient adequate protection exists as to Bank Forward to allow the Debtor to use the cash collateral as proposed and should not be required for the use of the funds pursuant to this motion. In addition, Bank Forward has consented to the use of the funds as outlined in this Motion.
14. As to Central Plains, Debtor proposes to grant a replacement lien of the same validity, priority and effect as their pre-petition lien in 2023 and Spring 2024 Livestock sales and proceeds.
15. Counsel for the Debtor and Central Plains have discussed this matter and undersigned counsel are hopeful the parties can reach an agreement, through an agreed upon order. However, due to conflicting schedules, an agreement has not yet been reached, undersigned counsel has filed this motion in the event an agreement is not feasible.

WHEREFORE, the Debtor respectfully requests:

1. An Order determining expedited relief is appropriate under the circumstances outlined in this Motion.
2. An interim order:
 - a. Authorizing the use of the checks listed in Paragraph 8 above, for the purposes outlined in Paragraph 9 of this motion.
 - b. Requiring Bank Forward and Central Plains to endorse any checks required to provide the funds to the Debtor.
 - c. Determining Bank Forward is adequately protected and therefore, a replacement lien

for Bank Forward is not necessary for the use of these particular proceeds.

- d. Providing Central Plains Ag Solutions, a replacement lien of the same validity, priority and effect as their pre-petition liens in 2023 and Spring 2024 Livestock sales and proceeds.
- e. Advising Debtor not to use the funds for any expense not listed above and to not pay prepetition debts.
- f. Authorizing Debtor to exceed any particular expense listed on Paragraph 9, but the total use of cash collateral may not exceed \$68,293.49 without the consent of Bank Forward and Central Plains or court order; and
- g. Determining a final hearing is not necessary, as the motion requests only interim and expedited relief.

3. For such other and further relief as the Court deems just and equitable.

Dated this 15th day of September, 2023:

BULIE DIAZ LAW OFFICE

By: /s/ SARA E. DIAZ

Sara E. Diaz

ND License #06069

3523 45th St. S. Suite 102

Fargo, ND 58104

Phone: (701) 298-8748

Email: sara@bulielaw.com

ATTORNEYS FOR PAUL TOPP